

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUSTIN ALLEN DAVEY,

Plaintiff,

v.

PIERCE COUNTY COUNCIL, et al.,

Defendant.

Case No. C21-05068-JCC-SKV

ORDER DENYING MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT WITHOUT PREJUDICE
AND WTH LEAVE TO RE-FILE

This is a 42 U.S.C. § 1983 prisoner civil rights action. Currently pending before the Court is Plaintiff's motion for leave to file an amended complaint pursuant to Fed. R. Civ. P. 15(a)(2). Dkt. 50. Plaintiff's motion appears to indicate, in part, that he had been unable to file an amended complaint previously due to inadequate access to the law library while he was incarcerated at Washington Correction Center. *Id.*

Federal Rule of Civil Procedure 15(a), provides:

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

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1 Fed. R. Civ. P. 15. Although this is a liberal standard, leave to amend is discretionary and courts
2 have identified a number of factors to consider when determining whether leave is appropriate.
3 *See, e.g., Foman v. Davis*, 371 U.S. 178, 182 (1962). These factors include undue prejudice,
4 futility, and undue delay. *Id.*

5 Because it has been more than 21 days since Defendants filed their motion to dismiss
6 pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiff may no longer amend as a matter of course and
7 may do so only with Defendant's written consent or the Court's leave. Fed. R. Civ. P. 15(a); *see*
8 Dkt. 33.

9 Local Civil Rule (LCR) 15 also requires a party who is seeking to amend a pleading to
10 attach the proposed amended pleading as an exhibit to the motion. LCR 15. The party must also
11 indicate how the proposed amended pleading differs from the original pleading by highlighting
12 the text that is added and striking through part that is deleted. *Id.* This rule allows the Court and
13 the parties to see the proposed amended complaint and evaluate whether the leave to amend is
14 appropriate.

15 Here, Plaintiff seeks leave of the Court to file an amended complaint but fails to include a
16 copy of the proposed amended complaint with his motion. Dkt. 50. As such, Defendants would
17 be unable to properly respond to Plaintiff's motion and the Court is unable to properly consider
18 the motion and determine whether amendment is appropriate.

19 Accordingly, it is hereby ORDERED:

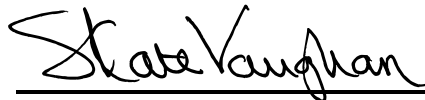
- 20 (1) Plaintiff's motion for leave to file an amended complaint, Dkt. 50, is DENIED without
21 prejudice as he fails to include a copy of his proposed amended complaint with his
22 motion pursuant to LCR 15. Plaintiff is granted leave to re-file his motion for leave to
23 amend, but **he must include a proposed second amended complaint with his motion**

1 so that the Defendants and properly respond and the Court can properly consider whether
2 amendment is appropriate.

3 (2) The Court also notes that it is unclear from Plaintiff's motion whether he is aware that he
4 did, in fact, previously file an amended complaint, Dkt. 26, which is now considered the
5 operative complaint in this action. **For clarification and efficiency purposes, the Clerk**
6 **is directed to send Plaintiff a copy of his amended complaint, Dkt. 26, a copy of the**
7 **docket sheet in this case, and a copy of the Court's form 42 U.S.C. § 1983 civil rights**
8 **complaint.** These documents will enable Plaintiff to review his current amended
9 complaint and determine whether he believes it is necessary to re-file his motion for leave
10 to amend his complaint further, or whether his current amended complaint contains all
11 causes of action, facts and arguments he intends to pursue in this action. Plaintiff is
12 advised that if he moves again for leave to amend his complaint and the motion is
13 granted, his proposed second amended complaint will act as a complete substitute for the
14 original complaint, and not as a supplement. Therefore, the proposed second amended
15 complaint must be complete in itself and contain all causes of action, facts, and argument
16 Plaintiff intends to pursue in this action. Any facts and causes of action alleged in the
17 original complaint that are not alleged in the second amended complaint are waived.

18 (3) The Clerk is directed to send copies of this order to the parties and to the Honorable John
19 C. Coughenour.

20 Dated this 14th day of December, 2021.

21 
22 _____

23 S. KATE VAUGHAN
United States Magistrate Judge